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Filed: August 25, 2003
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Examiner: William E. Tapolcai
Group Art Unit: 3744

Remarks/Arguments

Claims 1-23 were in the application as last examined. By this amendment, new claims 24-28 have been added. It is respectfully submitted that no new matter is added to the application by these amendments. Further consideration and examination are respectfully requested.

Claim rejections under 35 U.S.C. §102

Claims 1, 2, 6, 8, 9, 12, and 14 stand rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 6,449,958 to Foye. The rejection is respectfully traversed.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986).

Foye '958 discloses a beverage cooling apparatus that includes a housing 12 and a container 30 that is sized to releasably and fittedly receive a cylindrical can or cup-type container (col. 4, ll. 51-53). A thermoelectric device 67, a fan 68, and heat sinks 65, 66 are provided to cool a beverage can or cup disposed in the housing (col. 6, ll. 37-39) or in the container 30 (col. 5, line 27 et seq.). A securing means 40 releasably secures a cylindrical can in the container 30 (Foye col. 4, ll. 53-54).

With respect to claim 1, Foye '958 does *not* disclose a beverage container support configured to support beverage containers having different vertical heights and different cross-sectional areas. Applicants intend the term "configured" in its ordinary sense of "designed, arranged, set up, or shaped with a view to a specific application or use." *The American Heritage Dictionary of the English language, Fourth Edition, Houghton Mifflin Company*. Applicants also intend the term "support" in its ordinary sense of "holding in position so as to keep from falling, sinking, or slipping." *ibid*. In other words, the container support of claim 1 has a design or an arrangement or set up or shape *specifically* to hold containers having different vertical heights and different cross-sectional areas in position so they do not fall, sink or slip. The container 30 of Foye '958 can certainly "hold" a beverage container that is smaller in cross-section and taller in height as the Examiner asserts. But it is just as certainly *not* designed or

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arranged or set up or shaped *specifically* to support containers having different vertical heights and different cross-sectional areas *in position*. A smaller beverage container as contemplated by the Examiner can slip or fall within the container 30 because the container 30 is not configured to support a beverage container of any size other than what fits snugly within it or within the securing means 40.

Indeed, the container 30 is sized to fittedly receive a can or a cup (see col. 4, ll. 51-53), but there is no teaching or suggestion of any means to fittedly receive cans or cups having different cross-sectional areas and heights. A can or cup that is fittedly received will be "supported" in that it is held in position against falling, slipping, etc. But a can or cup of smaller dimension will not be supported because it is subject to slipping, falling, etc. and spilling its contents within the container 30.

With respect to claims 2 and 9, the beverage container support comprises first and second recesses, configured to receive different sized bottoms of beverage containers. Nothing in Foye '958 teaches or suggests multiple recesses configured to receive different sized bottoms. The container 30 shows only one recess. And although Foye '958 suggests two holes 19 or two containers 30, nothing in Foye '958 teaches or suggests different configurations to accommodate differently sized beverage containers.

With respect to claim 8, the concept of having the beverage container holder in a vehicle underscores the importance of having the container support configured to support a beverage container. Were the beverage container not supported in a moving vehicle, it would be more likely to fall or slip, thereby spilling its contents.

Claim 12 depends from claim 11, which the Examiner has determined to be allowable. Thus, claim 12 should be allowable for the same reasons that claim 11 is allowable.

Applicants acknowledge with thanks the Examiner's determination of the allowability of claims 3-5, 7, and 10, 11, and 13 and the allowance of claims 15-23. Nevertheless, Applicants have added new claims 24 -28 to more fully cover the claimed invention. The new claims all require a resizing element. No such feature is found in the Foye '958 patent, nor is there any teaching or suggestion in the references of record for combining such a feature with a thermal

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conditioner in a single unit. Therefore, new claims 24- 28 are believed to be patentable for much the same reasons that claims 1, 2, 6, 8, 9, 12, and 14 are patentable.

It is respectfully submitted that all of the claims in the application are allowable over the prior art of record. Early notification of allowability is respectfully requested.

If there are any questions regarding this matter, please contact the attorney of record

Respectfully submitted,

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Dated: 6/4/04

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G0126171